Supreme Court, U.S.
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No. 129, Original

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

STATE OF MARYLAND,

Defendant.

ON BILL OF COMPLAINT

ANSWER TO COUNTERCLAIM AND RESPONSE TO MOTION FOR APPOINTMENT OF SPECIAL MASTER

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ANSWER TO COUNTERCLAIM

The Commonwealth of Virginia ("Virginia") responds to the Counterclaim, dated July 31, 2000, filed by the State of Maryland ("Maryland"), as follows:

1. In response to the allegations in the Counterclaim, Paragraph 57, Virginia admits that Article III, Section 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. § 1251(a), provide the United States Supreme Court with original and exclusive jurisdiction of controversies between two states. Virginia denies that the Supreme Court should exercise jurisdiction over Maryland's Counterclaim to the extent it exceeds the scope of Virginia's Bill of Complaint. The Bill of Complaint concerns whether Maryland can regulate Virginia's access to, and use of, the

Potomac River through its regulatory permitting scheme, which Maryland presently imposes on Virginia entities seeking to use the Potomac River, to the detriment of Virginia and her citizens. The Counterclaim, by contrast, raises abstract questions of law concerning Maryland's sovereignty generally in the Potomac River, which have no factual context and go well beyond the pending controversy between the States. To the extent that the Counterclaim raises issues that exceed the scope of Virginia's Bill of Complaint, the Counterclaim presents no justiciable case or controversy. Moreover, Maryland did not seek leave of Court to file the Counterclaim. If it had, Maryland would have been unable to demonstrate that this Court should resolve the abstract question of Maryland's claimed sovereignty over the Potomac River beyond the issues squarely presented in the Bill of the Complaint.

2. In response to the allegations in the Counterclaim, Paragraph 58, Virginia admits that the boundary between Virginia and Maryland is at the low-water mark of the Potomac River on the Virginia shore, in accordance with the Black-Jenkins Award of 1877, Act of March 3, 1879, ch. 196, 20 Stat. 481. But Virginia and its citizens have the right to use the River and to build improvements appurtenant to the shore, as recognized by Article VII of the Compact of 1785, Clause Four of the Black-Jenkins Award, the Potomac River Compact of 1958, Pub. L. No. 87-783, 76 Stat. 797 (1962), the Potomac River Low Flow Allocation Agreement, and federal common law governing access to, and use of, interstate streams.

3. The allegations in the Counterclaim, Paragraph 59, constitute legal argument to which no answer is required. However, to the extent necessary for purposes of this Answer,

Virginia denies that Maryland has authority to regulate Virginia's activities in the Potomac River that are contemplated, addressed and governed by Article VII of the Compact of 1785, Clause Four of the Black-Jenkins Award, the Potomac River Compact of 1958, the Potomac River Low Flow Allocation Agreement, and federal common law governing access to, and use of, interstate streams.

4. Virginia denies the allegations in the Counterclaim, Paragraph 60.

5. Virginia denies any remaining factual allegations in the Counterclaim that are not admitted above.

WHEREFORE the Court should dismiss the Counterclaim and award Virginia all costs, fees and expenses incurred in defending against it.

RESPONSE TO MOTION FOR APPOINTMENT OF SPECIAL MASTER

Although some or all of the issues raised in this case could be decided on cross-motions for summary judgment, such as Maryland's contention that Virginia's compact rights are inapplicable above the tidal reach of the Potomac River, Virginia does not oppose Maryland's request for the appointment of a Special Master. The Special Master should be granted authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem it necessary to call for, and to submit such reports to the Court as the Special Master may deem appropriate.

Respectfully submitted,

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